

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 10.7.101,)	ON PROPOSED AMENDMENT
10.7.109, 10.7.110, 10.7.111,)	
10.7.115, 10.7.118, 10.10.202,)	
10.10.309, 10.10.316,)	
10.10.320, 10.10.611,)	
10.10.614, 10.15.101,)	
10.20.102, 10.20.106,)	
10.21.101B, 10.21.101C,)	
10.21.101F, 10.21.101I,)	
10.21.102A, 10.21.102B,)	
10.21.102E, 10.22.102,)	
10.23.102, 10.30.102, and)	
10.30.403 relating to school)	
finance and transportation)	

TO: All Concerned Persons

1. On June 30, 2004, at 2:00 p.m. a public hearing will be held at the Office of Public Instruction conference room, 1300 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rules relating to school finance and transportation.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on June 18, 2004, to advise us of the nature of the accommodation that you need. Please contact Joan Anderson, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406)444-1960, TDD number: (406)444-0235, FAX: (406)444-0509, e-mail: janderson@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.7.101 INTRODUCTION (1) through (2)(f) remain the same.

(g) By October 1 a district must send the county superintendent two copies of the TR-1 for each bus route ~~that carries elementary students only.~~

(h) By October 15 the county superintendent must send the state superintendent of public instruction the TR-1 for each bus route ~~that carries elementary students only.~~

(i) through (k) remain the same.

~~(l) By November 14 or the first pupil instruction day beginning on or after November 14, a district must count the eligible high school riders who ride the bus at least one morning during the 5 day counting period.~~

~~(m) By December 1 a district must send the county superintendent two copies of the TR-1 for each bus route carrying any high school student(s).~~

~~(n) By December 10 the county superintendent must send the superintendent of public instruction the TR-1 for each bus route carrying any high school student(s).~~

(o) through (ab) remain the same but are renumbered (l) through (y).

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-9-134, 20-9-166, 20-10-101, 20-10-124, 20-10-147, 20-10-201 20-10-202, 20-10-203, 20-10-204, 20-10-205, 20-10-206, 20-10-207, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement pupil transportation changes under SB 424 in the 2003 Legislative Session. SB 424 established a bus mileage reimbursement rate based on the capacity (size) of the school bus. It repealed the November count of high school ridership, which had previously necessitated a second reporting deadline for high school buses. A single deadline is proposed.

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-SCHOOL DISTRICT APPLICATION TR-1 FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT (1) The form used for this application, designated form TR-1, must be completed by the board of trustees for each approved bus route in the district.

~~(a) For routes carrying only elementary riders, the trustees shall send two copies of a TR-1 for each route to the county superintendent by October 1. No later than October 15, the county superintendent must send one copy of a TR-1 for each route carrying only elementary riders to the state superintendent of public instruction for approval.~~

~~(b) For eligible high school riders to be included in the formula used to calculate bus route reimbursement, they must ride the bus at least one morning during a five-day counting period that begins on November 14 or the first school day after November 14 and continues for a total of five consecutive pupil instruction days. A school district may record this count using a form TR-2, pupil list, provided by the office of public instruction, or a checklist of their own design.~~

~~(c) Bus routes that carry only high school riders who did not participate in the five-day count will receive the minimum daily reimbursement rate of 85 cents per mile for each route that carries at least one eligible rider if all other requirements are met.~~

~~(d) Bus routes that carry elementary riders and high school riders who did not participate in the five-day count will be reimbursed solely on the number of eligible elementary riders.~~

~~(e) The TR-1 forms for bus routes carrying one or more high school riders are due to the county superintendent on~~

~~December 1. No later than December 10, the county superintendent must send one copy of each TR-1 to the state superintendent of public instruction for approval. In addition to any elementary students on the route, TR-1 forms may only include the eligible high school riders who participated in the November count as eligible riders for reimbursement purposes.~~

(2) remains the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-10-112, 20-10-128, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above.

10.7.110 STANDARDS FOR SCHOOL BUSES (1) remains the same.

(2) State and county reimbursement for bus transportation will only be paid for routes operated with buses (either district-owned or contractor-owned) that pass the Montana highway patrol's inspection ~~before the beginning of each semester.~~ The Montana highway patrol's inspection will determine if the school bus meets the Minimum Standards for School Buses in Montana as adopted by the board of public education.

(3) through (5) remain the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-10-101, 20-10-102, 20-10-104, 20-10-111, 20-10-112, 20-10-141, 61-9-502, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to make (2) consistent with the requirements of (3).

10.7.111 QUALIFICATION OF BUS DRIVERS (1) through (5) remain the same.

(6) The qualifications of all bus drivers are reviewed at the time the state verification of transportation claims is made, as the qualifications of the bus driver are one of the criteria for eligibility for reimbursement. With the exception of (2) and (3), ~~OPI the state superintendent will not reimburse for routes driven by drivers without a current certificate on file with the office of public instruction at the time the TR-6 claim for reimbursement is due.~~ If any license, certificate or examination was expired for any period of time, the office of public instruction will withhold transportation reimbursement funding for the number of days the driver was not qualified.

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-10-103, 20-10-112, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement a change in process made possible by improved technology. Previously, the state's transportation payment system could not track the number of days that a bus driver's certificate was expired, so payments were adjusted only if the driver was not certified at the time claims were submitted in February and May. Improved technology allows state payments for the precise number of days the driver was certified during the semester, in compliance with law.

~~10.7.115 SCHEDULE FOR BUS TRANSPORTATION (1) Determine the total weighted eligible riders on a route by assigning passenger points as described in 20-10-127, MCA, and by performing the high school passenger count described in 20-10-128, MCA. As long as there is at least one weighted eligible rider, the rate per bus mile traveled shall be determined in accordance with the following schedule when the number of weighted eligible transportees that board a school bus on an approved route is at least one-half of its rated capacity:~~

~~(a) 85 cents per bus mile for a school bus with a rated capacity of not more than 45 children; and~~

~~(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional seating position in the rated capacity in excess of 45 shall be added to a base of 85 cents. A bus route having at least one eligible transportee and meeting other eligibility criteria will be reimbursed for bus mileage according to the rate schedule provided in 20-10-141, MCA. A bus route without at least one eligible transportee is not eligible to receive reimbursement.~~

~~(2) remains the same.~~

~~(3) When the number of eligible transportees boarding a school bus on an approved route is fewer than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:~~

~~(a) determine the number of eligible transportees that board the school bus on the route;~~

~~(b) weight the riders according to 20-10-127, MCA;~~

~~(c) multiply that number, determined in (b), by two; and~~

~~(d) use the adjusted rated capacity determined in (c) as the rated capacity of the bus to determine the rate per bus mile traveled.~~

~~(4) and (5) remain the same but are renumbered (3) and (4).~~

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-10-127, 20-10-141, 20-10-142, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above.

10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER (1) and (1)(a) remain the same.

~~(b) Copies of forms mailed to district officials by September 10 of each year;~~

~~(c) Forms completed by district officials, due in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students;~~

~~(d) (c) Completed forms transmitted by county superintendent to state superintendent of public instruction by October 15 for bus routes carrying only elementary students and by December 10 for bus routes carrying any high school students;~~

(e) remains the same but is renumbered (d).

(2) through (2)(b) remain the same.

~~(c) Copies of forms mailed to district officials by September 10 of each year;~~

~~(d) Forms completed by district officials, due in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students;~~

(e) remains the same but is renumbered (d).

(3) through (3)(b) remain the same.

~~(c) Copies of forms mailed to district officials by April 15 of each year;~~

(d) through (g) remain the same but are renumbered (c) through (f).

(4) remains the same.

(a) Forms supplied by the state superintendent of public instruction each semester;

~~(b) Copies of forms mailed to district officials:~~

~~(i) first semester by mid January,~~

~~(ii) second semester by April 30;~~

~~(c) Forms completed by district officials and due in the county superintendent's office:~~

~~(i) and (ii) remain the same.~~

(d) remains the same but is renumbered (c).

(i) and (ii) remain the same.

(e) remains the same but is renumbered (d).

(5) remains the same.

(a) Forms supplied by the state superintendent of public instruction each semester;

~~(b) Copies of forms mailed to district officials:~~

~~(i) first semester by mid January,~~

~~(ii) second semester by April 30;~~

~~(c) Forms completed by district officials and due in the county superintendent's office:~~

~~(i) and (ii) remain the same.~~

(d) remains the same but is renumbered (c).

(i) and (ii) remain the same.

(e) remains the same but is renumbered (d).

(6) through (9) remain the same.

AUTH: Sec. 20-3-106, 20-10-112, MCA

IMP: Sec. 20-9-166, 20-10-101, 20-10-103, 20-10-111, 20-10-112, 20-10-124, 20-10-128, 20-10-132, 20-10-141, 20-10-142, 20-10-145, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.7.101 above. In addition, forms are now posted electronically rather than being mailed.

10.10.202 MONTHLY TRANSFERS TO EQUAL WARRANTS ISSUED PLUS UNREMITTED PAYROLL LIABILITIES (1) Warrants issued from the clearing account and unremitted payroll liabilities must equal the total of the amounts transferred to the clearing accounts. The county treasurer must be notified by letter of the monthly transfers to be made along with a list of warrants written, a list of authorized direct deposits for payroll, or a duplicate of each warrant.

AUTH: Sec. 20-9-102, 20-9-201, 20-9-220, MCA

IMP: Sec. 20-9-102, 20-9-201, 20-9-220, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to clarify that if payroll is paid by direct deposit, the transfer letter sent to the County Treasurer must include information pertaining to those transactions. Previous omission of this phrase has caused districts to question the allowability of transfers to cover direct deposit payroll transactions, which have become commonplace since the rule was originally established.

10.10.309 DISTRIBUTION AND REAPPROPRIATION OF COUNTYWIDE FUNDS (1) and (2) remain the same.

(3) The cash balance in the elementary and high school countywide retirement and transportation funds at fiscal year end must be reappropriated in the following fiscal year once distributions to school districts for the current and prior years are 100% of the total net district requirements ~~and the reserve permitted by 20-10-146, MCA, has been provided.~~

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-213, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to remove an incorrect reference.

10.10.316 ~~REPORTING RETIREMENT COSTS~~ DISTRICT RETIREMENT FUND (1) remains the same.

(a) reporting expenditures distributed to all expenditure programs and functions used in payroll; or

(b) reporting resources transferred to a special education cooperative for non-federal employee benefits and a

single, undistributed ~~expenditure~~ total for the remaining retirement fund expenditures.

(2) remains the same.

(3) A district that paid retirement benefits for federally funded employees in excess of the limit imposed by 20-9-501, MCA, must reimburse the district retirement fund in the fiscal year the error is detected using current year grant funds or, if the grant project has closed, using non-federal funds. A reimbursement made after the year in which the charges exceeded the limit must be recorded as a prior period expenditure in the fund making the reimbursement.

AUTH: Sec. 20-9-102, 20-9-201, MCA

IMP: Sec. 20-9-103, 20-9-502, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement new requirements passed in SB 424, 2003 Session Laws. The law limits a district's use of retirement fund money for employees paid using federal funds. For FY04, retirement fund expenditures for federally funded employees are limited to the amount of retirement fund benefits paid for federally funded employees during FY03. For FY05, districts are prohibited from using the retirement fund for benefits for federally funded employees. This rule change adjusts the reporting requirements to allow districts who receive county retirement funding and pass it to a special education cooperative to pay retirement benefits to properly report those transfers. The rule also requires a district to repay the retirement fund if the fund was used to pay benefits for federally funded employees in excess of the legal limit. Repayment of the retirement fund is necessary to correct the amount overcharged to the county taxpayer and any overpayment of state guaranteed tax base aid paid to the county retirement fund.

10.10.320 CASH AND BUDGET TRANSFERS BETWEEN SCHOOL DISTRICT FUNDS (1) through (2)(e) remain the same.

(f) closure of district funds to establish a non-operating fund under 20-9-505, MCA; ~~and~~

(g) transfers of any portion of the balance of a bus depreciation fund approved by the voters as provided in ~~(4)-~~ (5); and

(h) transfers of unused tuition receipts from the miscellaneous programs fund to the general fund as provided in ARM 10.10.310.

(3) remains the same.

(4) Pursuant to 20-9-208, MCA, trustees shall not transfer cash into or out of the general fund except as otherwise specifically provided by law. Trustees shall not transfer cash from the compensated absences fund, which is funded using general fund transfers authorized by law, to any fund other than the general fund.

(4) and (5) remain the same but are renumbered (5) and (6).

~~(6)~~ (7) Except for the general fund, retirement fund, debt service fund, and bus depreciation fund, trustees may transfer:

(a) any portion of the cash balance in a budgeted fund to another budgeted fund for any purpose allowed by law, provided the money being transferred is comprised of revenue from sources other than tax receipts; and. ~~Trustees may transfer~~

(b) tax revenues from one budgeted fund to another budgeted fund, provided the money is subsequently expended for purposes the same as, or directly related to, the purposes for which the taxes were levied. When tax receipts are transferred, the trustees' resolution shall state the purpose for which the taxes were levied and the purposes for which the funds will be used.

(8) Pursuant to 20-10-145 and 20-10-146, MCA, state and county transportation aid is a reimbursement for expenditures paid from the district transportation fund and, as such, is not available for transfer to any other fund of the district.

(7) through (11) remain the same but are renumbered (9) through (13).

AUTH: Sec. 20-9-102, 20-10-112, MCA

IMP: Sec. 20-9-208, 20-9-439, 20-9-443, 20-9-512, 20-9-515, 20-9-703, 20-10-147, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) add an item that was inadvertently omitted from the list of specifically allowed transfers; 2) prohibit general fund money that has been accumulated in the Compensated Absences Fund from being subsequently transferred to another fund; and 3) clarifying that state and county transportation reimbursement must be used for pupil transportation and cannot be transferred to another fund.

10.10.611 ESTABLISHMENT OF INVESTMENT ACCOUNTS

(1) remains the same.

~~(2) The district must establish a separate school district investment account for each district fund. Elementary and high school accounts must be maintained separately. Trustees may deposit money from elementary and high school funds of districts operating as a unified school system as provided in 20-6-312, MCA, into a combined investment account or accounts, provided the financial activity of each fund and district is separately identified in the district's financial records and provided that income on investments is allocated to the district fund which generated the income.~~

(3) and (4) remain the same.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement new requirements passed in SB 307, 2003 Session Laws. The law eliminates the requirement that districts establish separate investment accounts for each fund and allows the district and county treasurer to negotiate the length of time that an investment agreement is binding. The law allows all district revenue, other than debt service revenue, to be sent to an investment account.

10.10.614 PAYMENTS INTO AN INVESTMENT ACCOUNT (1) The school district may apply in writing to the ~~office state superintendent~~ of public instruction to distribute the district's ~~BASE aid payments, including the direct state aid, state special education funding, and general fund GTB payments,~~ by direct electronic transfer of funds into an investment account as provided by 20-9-235 and 20-9-346(3), MCA.

(2) To qualify for the electronic transfer, the trustees shall submit a written request to ~~OPI the state superintendent,~~ including a copy of the trustees' written agreement under ARM 10.10.613 for ~~the district's general~~ each affected fund and a copy of the direct deposit signup form (OMB standard form 1199A), signed by the district and the investment firm, indicating the routing numbers for the electronic deposit into the school investment account ~~for the general fund.~~

(3) The ~~office state superintendent~~ of public instruction shall approve the request if:

(a) the district is currently in compliance with financial accounting and reporting requirements of the ~~office state superintendent~~ of public instruction;

(b) and (c) remain the same.

(4) The ~~office state superintendent~~ of public instruction shall process an eligible district's request for direct depositing beginning with the next scheduled ~~BASE aid~~ payment if the district's completed request is received by the 10th of a month, barring unforeseen delays.

(5) Federal grant payments may only be made to an investment account that does not earn interest or other income.

(6) The state superintendent of public instruction may rescind the approval of a district's request to receive electronic transfers to investment accounts if the criteria of (3) and internal control provisions of ARM 10.10.615 are not met. Upon receipt of written notice, the trustees may request a hearing to be held within 30 days. If, after hearing, the conclusion is that the criteria of (3) are not being met, the state superintendent of public instruction may discontinue transfers to the district's investment account after a waiting period of 60 days.

AUTH: Sec. 20-9-102, 20-9-235, MCA

IMP: Sec. 20-9-235, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule for the same reasons as set forth following ARM 10.10.611 above. In addition, the State Superintendent proposes to clarify that the agency will not transfer federal money, which the State Superintendent pays on an advance basis for grants, to an account where it will earn income. Federal law prohibits subgrantees' use of federal money to pursue interest income. The State Superintendent also proposes to rescind the agreement to electronically transfer payments to a district investment account following due process if a district fails to comply with criteria originally used to approve the transfers.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) through (2) remain the same.

(3) "Average daily attendance" or "ADA" is the average number of students present on the dates used to report fall and spring disaggregated enrollment and attendance data. The total number of students present in grades 1-12, as reported on the ~~October and February fall and spring disaggregated enrollment counts and used to determine average number belonging,~~ and attendance data reports, will be added together and divided by two to determine the average daily attendance for that school year. The number of pre-kindergarten and kindergarten students present, as reported on the ~~October and February enrollment counts those data collections,~~ will be added together and divided by four to determine average daily attendance for that school year.

(4) through (23) remain the same.

(24) "Enrolled student" means:

(a) a high school student assigned to receive organized instruction in an education program described in ARM 10.55.904 that is offered by a public school and can be applied towards the graduation requirements of ARM 10.55.905-~~ti~~;

(b) a high school student who is a resident of the district and is receiving educational or vocational services in a Montana job corps program under an interlocal agreement with the district as provided in 20-9-707, MCA;

(c) ~~or~~ an elementary student assigned to receive organized instruction in an education program described in ARM 10.55.901 ~~through 10.55.903 and 10.55.902-~~ti~~~~; or

(d) an elementary or high school student in a course of instruction agreed to in an individualized education program (IEP).

(25) and (26) remain the same.

(27) "Facility guaranteed mill value per ANB" means the CY 20XX-1 statewide mill value multiplied by 1.40, then divided by the statewide FY 20XX high school or elementary ANB.

(27) through (45) remain the same but are renumbered (28) through (46).

~~(46)~~(47) "School block grant" means the block grants paid by the state to a school district's budgeted funds as provided in ~~section 244, chapter 574, laws of 2001~~ 20-9-630, MCA.

(47) through (57) remain the same but are renumbered (48) through (58).

AUTH: Sec. 20-9-102, MCA

IMP: Title 20, ch. 9, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) implement SB 394, 2001 Session Laws, which allowed enrollment of resident students attending school in a Montana Job Corps Program; 2) correct an incorrect legal reference; 3) implement SB 424 changes affecting the state's subsidy for the district debt service mill levy; 4) update the reference to an uncodified section of law regarding school block grants that was continued in SB 424, 2003 Session Laws; and 5) implement a change in the collection of average daily attendance data that is necessary for compliance with the Federal No Child Left Behind Act.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) remains the same.

(2) The state superintendent of public instruction shall determine the appropriate budget units for the ANB calculation and the BASE funding program for the district. The ~~ANB~~ enrollment generated by a budget unit that is subsequently closed, shall be added to the ~~ANB~~ enrollment of another budget unit of the district for the first year after the closing of a budget unit if students are enrolled in the other budget unit.

(3) through (5) remain the same.

(6) For calculation of average daily attendance (ADA), a school district will report the number of enrolled students ~~counted under (4)~~ who are present and the number of enrolled students who are absent on the official ~~count~~ fall and spring disaggregated enrollment and attendance data collection days.

(7) through (10) remain the same.

(11) Trustees may apply for increased ANB for early graduates who are enrolled as of the first Monday of October as a senior in high school, the seventh semester of secondary school, and complete the graduation requirements prior to the February 1 enrollment count in accordance with 20-9-313, MCA, by filing a request with the ~~office~~ state superintendent of public instruction stating the names of pupils which were not included in the February 1 enrollment count because they graduated early and the date of graduation. The application must be submitted by ~~May 10 of the year the deadline in ARM~~ 10.20.103 preceding the year for which ANB is being calculated.

(12) through (15) remain the same.

AUTH: Sec. 20-9-102, 20-9-346, 20-9-369, MCA

IMP: Sec. 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to: 1) correct a reference to ANB that should refer to enrollment; and 2) implement an attendance data collection process that is necessary for compliance with the Federal No Child Left Behind Act.

10.20.106 STUDENTS PLACED IN EDUCATION PROGRAMS

(1) ~~The office state superintendent~~ of public instruction recognizes that a Montana state agency or court may place a Montana student in a facility located within a school district that is not the student's district of residence. ~~The office state superintendent~~ of public instruction also recognizes that a district may contract with a private or public entity for the provision of a Montana resident student's education. If a district contracts and pays for the provision of a Montana student's education, the district may include that student in the district's enrollment count for purposes of calculating ANB, provided:

(a) through (c)(i) remain the same.

(ii) the student's education program is under the direction and supervision of the district and is provided by district staff or is provided pursuant to a special education individualized education program implemented by the district, except that the trustees' placement of a resident student in a private, nonsectarian day treatment program and the state's placement of a student in a county or regional detention center are subject to (5). ~~This provision will be applied retroactively to July 1, 2002; and~~

(d) the contractor is a facility, center, home or other program licensed by and located within the state of Montana, excluding licensed day care centers; and

(e) the student is a resident of the district or meets the attendance with mandatory approval provisions of 20-5-321(1)(d) or (1)(e), MCA.

(2) Payments made to contractors described in (1) are not considered tuition for purposes of applying the provisions in Title 20, chapter 5, part 3, MCA. When a district contracts for a Montana student's education, the cost for such services shall be paid from the district's general fund or from federal funds, provided the cost is an allowable use of the federal funds. Except as provided in (5), ~~districts~~ shall not use the tuition fund for payments to private education programs.

(3) and (4) remain the same.

(5) The district may not include for purposes of calculating ANB:

(a) a student who is placed in a private, nonsectarian day treatment program. Districts may use the district tuition

fund to pay for educational services and may claim an ANB reimbursement payment under provisions of 20-5-324, MCA, and ARM 10.10.106 for a student placed under an IEP in a day treatment program at a private, nonsectarian school located in or outside the child's district of residence; and

(b) a student who has been placed in a county or regional detention facility, which is required under 41-5-1807, MCA, to provide educational programs for youth at county expense. Pursuant to 20-9-130, MCA, districts may use the district tuition fund to pay for detention center educational services charged pursuant to 41-5-1807, MCA.

AUTH: Sec. 20-7-419, MCA

IMP: Sec. 20-5-321, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to implement HB 135, 2003 Session Laws, which allows an ANB funding reimbursement for students placed in private, nonsectarian (i.e., non-church related) day treatment programs. This amendment also clarifies that students placed in county or regional youth detention centers under 41-5-1807, MCA, are not counted as enrolled for purposes of ANB funding.

10.21.101B CALCULATION OF STATEWIDE RATIOS GTBA

(1) remains the same.

(2) The statewide elementary or high school mill value per ANB for purposes of calculating FY 20XX+1 retirement fund GTBA is: $[(\text{calendar year } 20\text{XX}-1 \text{ statewide taxable value valuation} \times 1.21) / 1,000] / 20\text{XX} \text{ statewide elementary or high school ANB certified for the adopted budget.}$ ~~OPI may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of the district's budget would significantly affect the statewide ratios.~~

(3) Facility guaranteed mill value per ANB for purposes of calculating FY 20XX+1 school facility entitlement guaranteed tax base is: $[(\text{calendar year } 20\text{XX}-1 \text{ statewide taxable valuation} \times 1.40) / 1000] / \text{FY } 20\text{XX} \text{ statewide elementary or high school ANB certified for the adopted budget.}$

(4) The state superintendent of public instruction may instead use final data in cases where significant changes in ANB and taxable valuation made after the adoption of the district's budget would significantly affect the statewide ratios or mill values per ANB.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, which expanded districts' eligibility to receive school facility acquisition (aka "debt

service guaranteed tax base") payments for general obligation bonds sold before July 1, 1991.

10.21.101C CALCULATION NOTIFICATION OF MILL VALUES PER ANB AND GTB RATIOS (1) By March 1 ~~OPI~~ the state superintendent of public instruction will calculate preliminary state, county, and district mill values per ANB, facility guaranteed mill values per ANB, and preliminary state and district GTB ratios.

(2) By March 1 ~~OPI~~ the state superintendent of public instruction will send:

- (a) and (a)(i) remain the same.
- (ii) the district's ~~debt-service~~ mill values per ANB_T;
- (iii) the county's mill values per ANB_T;
- (iv) the statewide mill values per ANB_T; and
- (v) facility guaranteed mill values per ANB; and
- (vi) the statewide GTB ratios;

(b) remains the same.

- (i) the county's mill values per ANB_T; and
- (ii) the statewide mill values per ANB.

(3) and (3)(a) remain the same.

(b) ~~The~~ ANB used to calculate the mill value per ANB and per-ANB entitlement.

(4) remains the same.

(5) ~~Between March 1 and April 15~~ By May 1, school districts and counties must review the preliminary figures. If a school or county official believes there is an error, the procedure to follow is:

(a) If the alleged error involves ANB data, GTB mill values, or GTB ratios, ~~OPI the state superintendent of public instruction must receive written notification, and documentation establishing the error, and all information necessary to make corrections by April 15.~~ OPI The state superintendent of public instruction will review its the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant impact. Any notification of error received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios;

(b) If the alleged error involves taxable valuation, ~~the official must notify the appropriate county assessor in writing by April 1. The notification must include details of the error and request correction. Copies of the letter to the county assessor must be mailed to OPI and the Property Assessment Division, Department of Revenue, PO Box 202701, Helena, MT 59620-2701. the district must request a correction from the department of revenue (DOR). DOR will make any necessary change correction and notify OPI the state superintendent of public instruction of the change, in writing, prior to April 15 correction.~~ The state

superintendent of public instruction will review the calculation and make necessary corrections to final district and county mill values per ANB and final district ratios. For statewide ratios and mill values per ANB, notification of error must be received prior to May 1 and will only be taken into consideration in cases of significant statewide impact. Any changes received after April 15 will not be taken into account in establishing the final statewide, district, and county mill values per ANB and the final district and statewide ratios.

(6) By April 25 ~~OPI~~ the state superintendent of public instruction must be notified if two or more districts intend to consolidate or annex in the ensuing fiscal year. ~~OPI~~ The state superintendent of public instruction will combine the districts' ANB, GTBA budget area, and taxable values to calculate the combined district's final debt service GTB mill value per ANB and weighted GTB subsidy per mill(s) in the BASE budget levy.

(7) If material differences in statewide ratios are documented or legislative changes occur regarding the calculation, ~~OPI~~ the state superintendent of public instruction will recalculate and notify all districts and counties by May 1 of the final state, county, and district mill values per ANB, final facility guaranteed mill values, final district general fund weighted GTB subsidy per mill(s) in the BASE budget levy, and final state GTB ratios.

AUTH: Sec. 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.101F CALCULATION OF GENERAL FUND GTBA TO QUALIFYING DISTRICTS (1) After receiving the certified BASE budget levies, ~~OPI~~ the state superintendent of public instruction will determine the amount of general fund GTBA a qualifying district will receive in FY ~~199X+1~~ 20XX+1 using the following calculations:

(a) ~~199X+1~~ 20XX+1 state elementary or high school GTB ratio * district's ~~199X~~ 20XX GTBA budget area = "A"

(b) remains the same.

(c) "B"/1000 = dollar amount of ~~199X+1~~ 20XX+1 GTBA per mill levied. The result will be rounded to the nearest whole dollar to determine the amount of the subsidy payment.

(2) remains the same.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule for clarification and to update year references.

10.21.101I SCHOOL FACILITY ADVANCES AND REIMBURSEMENTS

(1) A school facility reimbursement will be provided to an eligible district to meet the district's debt service obligation for general obligation bonds sold after July 1, 1991 for school facility construction or renovation. A district may not receive a school facility reimbursement to meet its obligation for a special improvement district ~~or for debt service for refunding bonds sold for projects that began construction prior to July 1, 1991.~~ Eligible districts are provided advances for school facilities in the first school fiscal year in which a debt service payment is ~~due~~ budgeted.

(2) A district is eligible to receive a school facility reimbursement for debt service obligations on bonds described in (1) if the district mill value per ANB is less than the statewide facility guaranteed mill value per ANB. For a K-12 district, the eligibility of the elementary and high school programs for a school facility reimbursement is determined separately for each program.

(3) Pursuant to 20-9-422, MCA, regarding additional requirements for trustees' resolution calling a bond election, the ~~office~~ state superintendent of public instruction shall calculate an estimate of the amount of advance for which the district will be eligible. "Current year" information used to estimate this payment will be the current year information originally submitted on the final budget from the district and the prior year percentage used to prorate the state share of reimbursement for school facilities until the payment is made in May. After the May payment, "current year" information used to estimate the advance payment will be the ensuing year's information for ANB and district and statewide facility guaranteed mill values and the most current percentage used to prorate the state share of reimbursement for school facilities.

(4) A school district must report its annual debt service obligation for each bond issued by the district on the final budget form provided by the office of public instruction. The ~~office~~ state superintendent of public instruction will calculate the school facility reimbursement for a district using the amounts reported for debt service obligations on the budget form.

(5) The maximum reimbursement a district may receive is calculated on the lesser of the district's school facility entitlement or its current year debt service obligation for the bonds that qualify under (1).

(6) A district qualifies for a school facility reimbursement in the amount of the maximum reimbursement for the district multiplied by $[1 - (\text{district mill value per ANB} / \text{statewide facility guaranteed mill value per ANB})]$.

(7) If the legislative appropriation for the state reimbursement for school facilities is less than the amount

for which districts qualify in (6), the office state superintendent of public instruction will calculate the percentage that the appropriation represents of the total amount for which districts qualify. To determine the school facility reimbursement for each district, the office state superintendent of public instruction will apply that percentage to the amount calculated in (6).

(8) On or before May 31, the office state superintendent of public instruction shall distribute the state advance for school facilities and the state reimbursement for school facilities to qualifying districts for deposit in the district's debt service fund.

(9) After the payment is made in May pursuant to 20-9-371, MCA, actual state advance amounts for the ensuing fiscal year will be calculated using ANB and district and statewide facility guaranteed mill values for the year in which the advance applies and the most current percentage of state share which will be considered "prior year's" percentage in the year in which the payment is made. The office state superintendent of public instruction will notify the districts of the amount to estimate as revenue in their debt service funds by the final budget meeting.

(10) through (12) remain the same.

(13) If a district refunds more than one bond ~~and at least one of these original bonds is eligible for facilities reimbursement~~, the underwriter must provide schedule amounts representing ~~the eligible proportion of~~ the total of each of the refunded bonds.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.102A GTBA ON GENERAL FUND AND RETIREMENT MILLS AND SCHOOL FACILITY ~~AID~~ ADVANCE AND REIMBURSEMENT

(1) through (1)(b) remain the same.

(c) school facility advance and reimbursement to qualifying districts.

(2) ~~A district qualifies for GTBA if its taxable value relative to its funding obligation that must be met by local effort is less than the corresponding statewide mill value. A county qualifies for retirement fund GTBA and a district qualifies for school facility reimbursement if its mill value per ANB is less than the corresponding statewide mill value.~~

~~(3)~~ General fund GTBA is paid to qualifying districts on the mills levied to support their general fund GTBA budget area. A district qualifies for general fund GTBA if its GTBA ratio as calculated in ARM 10.21.101D is less than the statewide GTBA ratio as calculated in ARM 10.21.101B(1).

(4) and (5) remain the same but are renumbered (3) and (4).

AUTH: Sec. 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to implement SB 424, 2003 Session Laws, for the same reasons as listed under ARM 10.21.101B above.

10.21.102B CALCULATION OF COUNTY MILL VALUES PER ANB

(1) remains the same.

(2) The county elementary or high school GTB mill value per ANB for purposes of calculating FY ~~199X+1~~ 20XX+1 retirement fund GTBA is: (calendar year ~~199X-1~~ 20XX-1 county taxable value/1,000) / ~~199X~~ 20XX county elementary or high school ANB.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule to update year references.

10.21.102E CALCULATION OF GTBA TO QUALIFYING COUNTIES

(1) After receiving the certified county retirement levies, ~~OP~~ the state superintendent of public instruction will determine the amount of retirement fund GTBA a qualifying county will receive in FY ~~199X+1~~ 20XX+1 using the following calculations:

(a) remains the same.

(b) "A" * county elementary or high school ~~199X+1~~ 20XX+1
ANB = "B"

(c) "B" * certified elementary or high school FY ~~199X+1~~ 20XX+1 county retirement fund mills levied = dollar amount of ~~199X+1~~ 20XX+1 GTBA a county will receive in support of the elementary or high school county retirement fund.

AUTH: Sec. 20-9-102, 20-9-369, MCA

IMP: Sec. 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes the changes to this rule for clarification and to update year references.

10.22.102 GENERAL FUND SPENDING LIMITS (1) through (6) remain the same.

(a) For a non-operating district that reopens a school under 20-6-502, MCA, the applicability of school isolation

provisions in 20-9-302, MCA, will be determined by the ANB in the last operating year and the ANB in the year the school reopens.

(7) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. ~~OPI~~ The state superintendent of public instruction will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

(8) remains the same.

(9) ~~OPI~~ The state superintendent of public instruction shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The state superintendent of public instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-9-308, 20-9-315, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to address OPI policy isolation status under 20-9-302, MCA, for a non-operating school that reopens. Schools must apply for isolation status after having fewer than 10 ANB for one year. A non-operating school that reopens has no prior year ANB, so the last operating year's ANB is used for this determination.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) through (2)(a)(iii) remain the same.

(iv) Revenue from one-time funding sources, including prior year protested taxes, tax audit receipts, penalties and interest on taxes, ~~distributions of prior year county equalization revenues,~~ and federal payments in lieu of tax, may be estimated in the ensuing year's budget in an amount that is based on the most current information available to the district.

(v) School block grant funding as provided in ~~section 244, chapter 574, laws of 2001~~ 20-9-630, MCA.

(3) through (4)(b) remain the same.

AUTH: Sec. 20-9-102, MCA

IMP: Sec. 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to remove an obsolete reference. County obligations no longer exist for county equalization.

10.30.102 APPROVAL CRITERIA (1) Trustees must submit the application for isolation status as required by 20-9-302, MCA, to the county superintendent by May 1 of the second consecutive year in which the average adjusted enrollment as calculated in ARM 10.20.102(15) results in ANB of less than 10 elementary or 25 high school students for the ensuing fiscal year.

(2) In considering a request for approval of an application to have a school classified as an isolated school, the state superintendent of public instruction shall utilize the following criteria:

(a) through (d)(ii) remain the same.

(e) extenuating circumstances which support a variance from the requirements of ~~(1) through (4)~~ (2)(a) through (d), must be documented for consideration by the state superintendent of public instruction.

AUTH: Sec. 20-3-106, MCA

IMP: Sec. 20-6-502, 20-9-302, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend this rule to clarify the timing of a district application to the State Superintendent for isolation status. The rule also corrects an internal reference and updates references to the years of data used in calculations.

10.30.403 TRANSITION TO K-12 DISTRICTS (1) through (1)(b) remain the same.

(c) The county treasurer, in accordance with procedures established by the department of commerce and the ~~office~~ state superintendent of public instruction, shall transfer all elementary district fund balances to the high school district's funds effective July 1 of the year of the attachment. The K-12 school district will assume the cash and liabilities of the attached elementary district, and will maintain a single budgeted or nonbudgeted fund for each of the authorized funds of the K-12 district for the costs of operating all grades and programs of the district, pursuant to accounting and reporting procedures prescribed by the office of public instruction.

(2) and (3) remain the same.

(4) The elementary and high school district officials shall prepare a single budget per fund for the K-12 district for the effective year of formation of the K-12 district, and for each year thereafter, using the forms and procedures established by the ~~office~~ state superintendent of public instruction.

(a) and (a)(i) remain the same.

(ii) In order to determine equalized status of a transition K-12 school district for the ensuing fiscal year, the district shall make the following calculation:

Current FY 199X 20XX Elementary BASE Budget Limit	1a
Current FY 199X 20XX High School BASE Budget Limit	1b
Combined BASE Budget Limit (1a+1b)	1c
Current FY 199X 20XX Elementary Maximum General Fund Budget Limit	2a
Current FY 199X 20XX High School Maximum General Fund Budget Limit	2b
Combined Maximum General Fund Budget Limit (2a+2b)	2c
FY 199X 20XX Elementary Adopted General Fund Budget	3a
FY 199X 20XX High School Adopted General Fund Budget	3b
FY 199X 20XX Combined Adopted General Fund Budget (3a+3b)	3c

If 3c is less than or equal to the Maximum General Fund Budget (line 2c), the K-12 district will be considered "equalized" in the ensuing school year (FY ~~199X+1~~ 20XX+1). If not, then the K-12 district will be considered "not equalized" for the ensuing school year.

(b) through (b)(i)(D) remain the same.

(E) ~~up to~~ 40% of Special Education Allowable Costs & Related Services Payment to Co-op [40 times (C)+(D)]

(F) through (c) remain the same.

(5) For the initial year of the K-12 district, eligibility for program funding, established by the ~~office~~ state superintendent of public instruction in the year prior to the formation of the K-12 districts, will be transferred to the K-12 district. Characteristics of the districts (i.e., enrollment, expenditures, low-income data, needs assessment) may be calculated based on the combined districts' characteristics if the funding would be adversely affected when calculated separately, and if allowed by program requirements. Following the initial year of the K-12 district, funding eligibility will be determined for K-12 programs as a single district, or per specific program requirements.

(6) remains the same.

AUTH: Sec. 20-3-106, MCA

IMP: Sec. 20-6-702, 20-6-703, 20-6-711, MCA

Statement of Reasonable Necessity: The State Superintendent of Public Instruction proposes to amend ARM 10.30.403 to include 40%, rather than "up to 40%" of the state special education allowable cost funding in calculating the guaranteed tax base (GTB) area of a K-12 district's general fund budget. Using less than 40% in this calculation, while legally permissible, lowers the amount of state guaranteed tax base funding for a district. The provision poses a funding disadvantage for districts and consequently is not used.

Removing the unused capability to budget less than 40% greatly simplifies the electronic budget program and streamlines the State Superintendent's technical assistance for the budget process.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the State Superintendent of Public Instruction, Distribution to Schools Division, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on July 1, 2004.

5. Catherine K. Warhank, OPI Chief Legal Counsel, has been designated to preside over and conduct the hearing.

6. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding rulemaking actions by the State Superintendent of Public Instruction or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the State Superintendent of Public Instruction.

7. The bill sponsor requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch
Linda McCulloch
State Superintendent of Public
Instruction

/s/ Catherine K. Warhank
Catherine K. Warhank
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State on May 24, 2004.